Supreme Court, U.S.
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No. 97-2059

In the
Supreme Court of the United States
October Term, 1997

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Minneapolis Branch on behalf of themselves and all others similarly situated; BRYSTON HILL, by His Next Friend Lisa Hill; SOPHIE KRAHNKE, by Her Next Friends Steven Krahnke and Jane McLeod; MIQUEL MCELROY, by His Next Friend Annie Pearl McElroy; GREGORY MCFARLAND, by His Next Friend Linda McFarland; SOLVEIG MEBUST and ANNA MEBUST, by Thier Next Friends Bruce Lynn Mebust and Kirsten Ann Scribner Mebust; DIAMOND PORTER, by His Next Friend Jamie Porter,

Petitioners,

v.

METROPOLITAN COUNCIL, a Public Body Corporate and Politic,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. The question presented by petitioners -- whether the All Writs Act authorizes removal "on the ground that it is barred by a prior federal judgment" -- does not fairly reflect the decision of the court of appeals or the record in this case, and thus is not appropriate for review.

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Respondent Metropolitan Council opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit entered on May 29, 1998.

STATEMENT OF THE CASE

Defendant-Respondent Metropolitan Council removed this lawsuit because it threatened the integrity of the federal consent decree, which is subject to the on-going jurisdiction of the federal court, in Hollman v. Cisneros, Civ. No. 4-92-712 (U.S. Dist. Ct., Dist. Minn., Fourth Div.).

The relevant background of this case is set forth in detail in National Association For The Advancement of Colored People, Minneapolis Branch v. Metropolitan Council, 125 F.3d. 1171 (8th Cir. 1997) ("NAACP I"), vacated and remanded for reconsideration 118 S.Ct. 1162 (1998) (Petition Appendix ("Pet. App.") C), and National Association For The Advancement of Colored People, Minneapolis Branch v. Metropolitan Council, ___ F.3d ___, 1998 WL 271525 (8th Cir. 1998) ("NAACP II"), after remand from 118 S.Ct. 1162 (1998) (Pet. App. A). The following facts are provided to correct inaccuracies and omissions in Petitioners' Statement Of The Case.

A. The Hollman Litigation

In 1992, the Minneapolis Branch of the NAACP and a class of low-income minority families sued several federal and local agencies and governments, alleging, among other things, that the defendants segregated minority public housing tenants by causing a large portion of Minneapolis family public housing to be sited in minority- or poverty-concentrated neighborhoods. Pet. App. D-76-79. The plaintiffs added the Metropolitan Council as a defendant in

1994, contending that alleged segregation in Minneapolis public housing was the product of metropolitan area-wide exclusionary housing policies for which the Metropolitan Council partly was responsible. The Hollman plaintiffs alleged:

> 76. At the same time that the Met Council has stopped holding suburban communities accountable for low income housing development, the Council has accelerated the polarization of the metro area by income and race by repeatedly approving funding for infrastructure expenditures such as sewer extensions, roads, and schools in many of the same suburban communities that have the least low income housing and the most exclusionary housing policies.
>
> 77. Had the Council enforced its own rules in the last decade, suburban low income housing opportunities would be significantly greater today. Application of Policy 39 to all funding applications by suburban communities would have compelled them to facilitate the production of low and moderate income housing . . . .

Pet. App. D-105-106. These "actions and inactions," the Hollman plaintiffs concluded, "have perpetuated and entrenched patterns of residential racial segregation in the metro area. . . ." Pet. App. D-107.

The Hollman litigation was settled in April 1995. The settlement was memorialized in a consent decree issued by the federal district court. The decree sets out numerous complex obligations and specific commitments of the Metropolitan Council to help further the deconcentration of racially concentrated housing in Minneapolis, and provides that the defendants will provide in excess of $100 million in federal

and local resources toward that end. See, generally, Pet. App. D-130-199. All parties to the Hollman decree, including the NAACP, mutually released and discharged all claims, known and unknown, under federal, state or common law which could have been asserted in Hollman and which arise out of any matters alleged in Hollman. Pet. App. D-180-181.

The district court expressly retained jurisdiction to issue "such further orders as may be necessary or appropriate for the enforcement" of the decree. Pet. App. D-187-188. The district court regularly exercises its continuing jurisdiction and supervises implementation of the consent decree by reviewing periodic reports, submitted by defendants, describing the activities carried out and the results achieved. The district court will continue to supervise implementation of the consent decree at least through April 2002. Pet. App. D-188-189.

B. The NAACP Litigation

Plaintiffs-petitioners Minneapolis Branch of the NAACP and individuals purporting to represent a class of Minneapolis school children (collectively "NAACP") commenced this action in Hennepin County District Court, State of Minnesota, on September 19, 1995, against the State of Minnesota, the governor and other state officials, and the Metropolitan Council. The NAACP plaintiffs claimed, in part, that the Minneapolis public schools are unlawfully segregated because of housing segregation allegedly caused by the Metropolitan Council's housing and related policies and practices:

> (d) Defendants have adopted, implemented, and permitted policies and practices that result in housing segregated by race and socioeconomic status in the metropolitan area, and thereby result in segregation by race and socioeconomic status in the Minneapolis

> public schools. Such policies and practices include, but are not limited to, for example, failure of the Metropolitan Council and the State to enforce Policy 39 from the June 1985 Housing Development Guide;
>
> . . .

Pet. App. F-236. The NAACP plaintiffs sought to permanently enjoin these policies and practices and sought an order requiring the Metropolitan Council "to remedy the violations of law." Pet. App. F-240.

C. Proceedings Below

The Metropolitan Council timely removed this case pursuant to 28 U.S.C. §§ 1651 and 1441, Pet. App. D-53-58, and later moved to dismiss. The district court remanded as to all defendants except the Metropolitan Council. The district court determined that removal was proper under the All Writs Act, 28 U.S.C. § 1651, to protect the integrity of the Hollman consent decree because "any remedy pertaining to Met[ropolitan] Council granted by the state court will necessarily overlap with the consent decree in place in Hollman . . . ." Pet. App. Pet. App. D-50-51 (emphasis added). The district court also held, in the alternative, that removal was proper under 28 U.S.C. § 1441 and the artful pleading doctrine, as articulated in Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 397 n.2 (1981), because the claims were artfully pleaded to evade federal jurisdiction. Pet. App. D-47-50.

Five months after denying plaintiffs' motion to remand, the district court dismissed the claims against the Metropolitan Council as barred by res judicata. "Plaintiffs' allegations against Met[ropolitan] Council constitute, at their core, housing claims identical to those alleged and resolved in the earlier case of Hollman v. Cisneros." Pet. App. D-44.

The NAACP filed a petition for writ of mandamus seeking an order to remand this action to the Hennepin County District Court. The court of appeals denied the petition.

The court of appeals subsequently held that removal was proper under the All Writs Act because the state court action threatened the integrity of the Hollman consent decree and the federal district court's on-going supervisory jurisdiction. Pet. App. C-17-19. Because it concluded that removal was proper under the All Writs Act, the court of appeals did not determine whether removal was warranted under the artful pleading doctrine as articulated in Moitie. Pet. App. C-19.

The court of appeals also affirmed the application of res judicata and the dismissal of the claims against the Metropolitan Council. "[A]s far as the claims against the Met[ropolitan] Council are concerned, this suit and Hollman involve the same cause of action." Pet. App. C-21.

On March 2, 1998, this Court vacated the court of appeals' opinion and judgment, and remanded for reconsideration in light of Rivet v. Regions Bank of Louisiana, 118 S.Ct. 921 (1998) (holding that § 1441(b) and the artful pleading doctrine do not authorize removal predicated on the affirmative defense of claim preclusion). NAACP v. Metropolitan Council, 118 S.Ct. 1162 (1998). On reconsideration, the court of appeals concluded that its decision was not at odds with Rivet because it had "affirmed the district court's decision to take jurisdiction over state-law claims based on the All Writs Act, not on claim preclusion." Pet. App. A-6. Therefore, the court of appeals reinstated its earlier opinion (NAACP I) and re-affirmed the district court's decision to take removal jurisdiction. Pet. App. A-9.

REASONS FOR DENYING THE WRIT

A writ of certiorari is unwarranted. Contrary to petitioners' Question Presented and repeated misstatement, the court of appeals did not hold that the All Writs Act authorized removal of an action "on the ground that it is barred by a prior federal judgment." The court of appeals held that the All Writs Act authorized removal to protect the integrity of an on-going federal consent decree, not because the removed action was barred by claim preclusion. The court of appeals' decision is not at odds with Rivet, and is consistent with this Court's precedents and legal principles.

I. THE COURT OF APPEALS' DECISION THAT REMOVAL WAS PROPER UNDER THE ALL WRITS ACT IS NOT AT ODDS WITH THIS COURT'S DECISION IN RIVET.

At issue in Rivet was the power of federal courts to exercise federal-question removal jurisdiction under the artful pleading doctrine articulated in Moitie, supra, based on a removing party's contention the removed state-law claim is precluded by an earlier federal judgment. This Court held that the affirmative defense of claim preclusion is not a basis for federal question jurisdiction. Rivet, 118 S.Ct. at 925-26.

In an effort to create a conflict with Rivet appear where none exists, petitioners repeatedly present the question to be decided by this Court as whether the All Writs Act authorizes a party to remove an action "on the ground that it is barred by a prior federal judgment." See, e.g., Petition For Writ of Certiorari ("Petitioners' Brief") at i, 12 and 15. The clear -- but false -- implication of the question presented is that the court of appeals held in this case that the All Writs Act authorizes removal when the removed claim is barred by claim preclusion.

The district court based its decision to take removal jurisdiction on two independent grounds: (1) the All Writs Act authorized removal to protect the integrity of the on-going federal consent decree in Hollman, and (2) under Moitie's footnote two, the claims were removable because they were artfully pleaded as state claims to evade federal jurisdiction. Pet. App. A-7-8. The court of appeals affirmed the district court's decision to take removal jurisdiction solely on the basis of the first ground, to effectuate and prevent the frustration of the district court's "ongoing supervisory jurisdiction under the Hollman consent decree." Pet. App. A-8-9.

The court of appeals recognized in NAACP I that "[a]s against the Met[ropolitan] Council, this suit seeks what Hollman sought: to end the claimed segregative effect of Met[ropolitan] Council's policies and practices concerning housing and related infrastructure projects in the Twin Cities' metropolitan area." Pet. App. C-21. Petitioners' lawsuit threatened the on-going operation of the Hollman Consent decree to the extent that the decree "sets forth the Met Council's agreement with the NAACP and the Hollman class that [the Metropolitan Council] will alter its policies and practices with respect to housing, wastewater facilities, and transportation in the Twin Cities' metropolitan area." Pet. App. C-18.

The court of appeals concluded in NAACP I: "[T]he district court was warranted in authorizing removal from state court under the All Writs Act to protect the integrity of the federal consent decree entered in Hollman." Pet. App. C-18 (emphasis added). Further, because the court of appeals determined that removal was proper under the All Writs Act to protect the integrity of the Hollman consent decree, it concluded that it "need not determine whether removal was also warranted under the artful pleading doctrine" as articulated in Moitie's footnote two. Pet. App. C-19.

Reviewing its NAACP I decision in light of Rivet, the court of appeals noted that it had "affirmed the district court's decision to take jurisdiction over state-law claims based on the All Writs Act, not on claim preclusion," and had "expressly declined to decide whether the claims were removable under Moitie's artful pleading doctrine." Pet. App. A-6. Therefore, the court of appeals correctly concluded its "opinion in NAACP [I] . . . is not contrary to the Court's holding in Rivet." Pet. App. A-8.

Notwithstanding petitioners' hyperbole, the court of appeals' decision does not "eviscerate," nor is it inconsistent with, Rivet's rule that removal may not be based on the affirmative defense of claim preclusion. Although the district court and court of appeals ultimately found that claim preclusion did bar petitioners' claims, the decision to take removal jurisdiction was not temporally or logically related to the decision to apply claim preclusion. Pet. App. A-6. The issues of removal and claim preclusion were briefed separately, argued at different times, and decided independently.[1]

Claim preclusion was irrelevant to the decision to take removal jurisdiction. Removal was justified because the relief petitioners sought involved the same housing-related policies and practices governed by Hollman Consent decree and, thus, necessarily would have interfered with the on-going operation of the decree.

> [A]ny remedy pertaining to Met[ropolitan] Council granted by the state court will necessarily overlap with the consent decree in place in Hollman, despite Plaintiffs' claim that the remedies sought in the two

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[1] The district court granted the Metropolitan Council's motion to dismiss five months after taking removal jurisdiction. Compare Pet. App. D-45-52 and Pet. App. D-25-44.

> cases pertaining to Met Council are different. Even if a state court remedy does not explicitly contradict the Hollman decree, federal court jurisdiction over the Met[ropolitan] Council claims is necessary to protect the integrity of the Consent Decree.

Pet. App. D-50-51; see also Pet. App. C-18 (petitioners sought "state injunctive relief against the Met[ropolitan] Council concerning the very matters the Hollman decree governs"). Under these circumstances, removal would have been warranted even if claim preclusion had not applied.

Contrary to petitioners' assertion, the court of appeals' decision does not give license to "any defendant with a claim preclusion defense . . . to circumvent *Rivet*." See Petitioner's Brief at 15. The typical case in which claim preclusion applies does not involve a consent decree with on-going supervision by a federal district court. Under the court of appeals' decision, removal would not be an option -- even if claim preclusion applied -- in the absence of a consent decree with on-going federal jurisdiction. In those cases, a defendant would be required to raise a claim preclusion defense to putative state claims in state court. Thus, the court of appeals' decision is perfectly consistent with Rivet.

II. THE COURT OF APPEALS' DECISION IS CONSISTENT WITH THIS COURT'S PRECEDENTS AND CONTROLLING LAW, AND THERE IS NO COMPELLING CONFLICT WITH THE DECISIONS OF THE OTHER COURTS OF APPEAL.

A. The Court Of Appeals' Decision Is Consistent With This Court's Precedents.

Contrary to petitioners' contention, the court of appeals' decision is consistent with this Court's admonitions that the All Writs Act "is a residual source of authority" and that power under the Act "is to be used sparingly." This Court made clear in Pennsylvania Bureau of Correction v. United States Marshals Service, 474 U.S. 34 (1985), that the All Writs Act "empowers federal courts to fashion extraordinary remedies when the need arises . . ." in situations not otherwise covered by statute. Pennsylvania Bureau of Correction, 474 U.S. at 43. In this case, the court of appeals expressly found such an extraordinary situation. Assuming the class action was not removable under 28 U.S.C. § 1441, the district court was confronted with a situation where the petitioners sought "state injunctive relief against the Met[ropolitan] Council concerning the very matters the Hollman decree governs." Pet. App. C-18. The court of appeals carefully limited its ruling to the extraordinary situation described above. "Faced with this circumstance, we believe the district court was warranted in authorizing removal from state court under the All Writs Act to protect the integrity of the federal consent decree entered in Hollman . . . ." Pet. App. C-18.

The court of appeals' decision follows logically from United States v. New York Tel. Co., 434 U.S. 159 (1977), where this Court held that the All Writs Act empowers a federal court "to issue such commands . . . as may be

necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." New York Tel. Co., 434 U.S. at 172. The federal district court in Hollman expressly retained jurisdiction to issue "such further orders as may be necessary or appropriate for the enforcement" of its decree governing the Metropolitan Council's housing-related policies and practices. Pet. App. D-187-188. The claims which petitioners asserted against the Metropolitan Council in this case, NAACP, "all had to do with housing-related policies and practices." Pet. App. A-7. Therefore, removal was both necessary and appropriate to prevent the frustration of orders the federal district court previously issued in its exercise of jurisdiction otherwise obtained in Hollman. See Pet. App. D-50-51.

If federal courts are not permitted to remove under these circumstances, in order to prevent interference with their decrees, defendants will be reluctant to enter into federal consent decrees with on-going obligations and no assurance of a federal forum in which to protect their rights under the decrees. Although state courts presumably would attempt to craft relief to avoid purposely interfering with the on-going implementation of a federal consent decree, they are not as well-suited to the task as the federal district court which shepherded the case to settlement, issued the decree, and supervises its on-going implementation.

B. There Is No Compelling Conflict Among The Circuits.

The court of appeals' decision is fully consistent with the decisions of the Second, Third, Sixth and Seventh Circuits, all of which recognize that the All Writs Act authorizes removal under extraordinary circumstances such as those presented in this case. See Davis v. Glanton, 107 F.3d 1044, 1047 n.4 (3rd

Cir. 1997), cert. denied 118 S.Ct. 159 (1997); Matter of VMS Securities Litigation, 103 F.3d 1317, 1324 (7th Cir. 1996); Sable v. General Motors Corp., 90 F.3d 171, 175 (6th Cir. 1996); In re Agent Orange Product Liability Litigation, 996 F.2d 1425, 1431 (2nd Cir. 1993), cert. denied 510 U.S. 1140 (1994); Yonkers Racing Corp. v. City of Yonkers, 858 F.2d 855, 863 (2nd Cir. 1988), cert. denied 489 U.S. 1077 (1989).[2]

Contrary to petitioners' contention, the court of appeals' decision also is consistent with the Ninth and Tenth circuit cases on which petitioners rely. In Westinghouse Electric Corp. v. Newman & Holtzinger, 992 F.2d 932 (9th Cir. 1993), the Ninth Circuit simply reiterated the well-settled principle that the All Writs Act does not operate to confer jurisdiction in the first instance; it only operates in aid of jurisdiction already obtained. Id. at 937. In this case, in contrast to Westinghouse Electric Corp., "[t]here is no dispute the district court properly obtained jurisdiction in Hollman." Pet. App. C-17. Thus, the district court applied the All Writs Act in this case in aid of jurisdiction otherwise obtained, not as an independent source of jurisdiction.

The Tenth Circuit case to which petitioners cite also is inapposite. Gullickson v. Southwest Airlines Pilots' Assoc., 87 F.3d 1176 (10th Cir. 1996), did not address the issue of whether the All Writs Act authorizes removal under the extraordinary circumstances presented in this case. In a one-sentence treatment, the Tenth Circuit, like the Ninth Circuit in Westinghouse, merely repeated the principle -- unchallenged in this case -- that "the All Writs Act does not provide an independent basis for jurisdiction." Id. at 1186. As noted above, in this case the district court did not assert the All

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[2] Petitioners' assertion that the court of appeals' decision is somehow inconsistent with the Second Circuit's interpretation of the All Writs Act is without merit. The court of appeals favorably cited and drew parallels to the Second Circuit cases which petitioners contend are inapposite. Pet. App. C-18-19.

Writs Act as an independent basis for jurisdiction; rather, it applied the All Writs Act in aid of jurisdiction otherwise obtained in Hollman.[3]

Further, petitioners cite a district court case for the erroneous proposition that the Fifth Circuit disagrees with the view held in common by the Second, Third, Sixth, Seventh and Eighth circuits. The decision of a district court cannot create a conflict among the circuit courts of appeal. Moreover, the district court case on which petitioners rely notes that "there are no Fifth Circuit cases addressing whether, or in what circumstances reliance on the All Writs Act for removal authority may be justified." Fidelity Financial v. Robinson, 971 F. Supp. 244, 249 (S.D. Miss. 1997). Assuming that the All Writs Act does authorize removal under "exceptional circumstances," the district court in Fidelity Finance held that the case did not present such circumstances. Id. at 249.

C. The Court of Appeals' Decision Comports With Principles Of Federalism, And Does Not Delegate Judicial Power To Private Parties.

Contrary to petitioners' assertion, the court of appeals was sensitive to principles of federalism and comity. Faced with

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[3] Petitioners understandably do not cite Hillman v. Webley, 115 F.3d 1461 (10th Cir. 1997), which is the only court of appeals decision that is marginally dissonant. Hillman held that the All Writs Act authorizes a federal district court to enjoin parties before it from pursuing conflicting litigation in state court, but does not authorize removal. Id. at 1469. However, Hillman did not involve on-going supervision of obligations under a consent decree similar to this case. Further, the concurring opinion in Hillman endorses the opposite view of the Second, Third, Sixth, Seventh and Eighth circuits. Id. at 1470 (Kelly, Jr., J., concurring in result, but concluding that the All Writs Act authorizes removal "in appropriate and narrow circumstances in aid of [a federal court's] jurisdiction").

the choice of removal or enjoining the state court action, the court of appeals chose the least intrusive course. "[W]e think removal in this case better preserves state-federal relations than would later resort to an injunction because it spares the Hennepin County District Court from expending judicial resources to no avail." Pet. App. C-19; see also Yonkers Racing Corp., 858 F.2d at 864. The approach endorsed by the court of appeals also eliminates the need for the federal court to monitor the state court proceeding to insure that the state court's orders do not interfere with the federal decree.[4]

Petitioners' additional contention that the court of appeals "has deprived a class of nearly 50,000 schoolchildren from litigating their state constitutional [education] claims in their state's courts," Petitioners' Brief at 25, simply is false. Petitioners' claims against the other defendants, which the district court remanded, currently are proceeding in state court. Further, as the court of appeals found, the Metropolitan Council does not bear any responsibility for public education under Minnesota law. Pet. App. C-21-22. Thus, petitioners have no state constitutional claims against the Metropolitan Council which properly could be prosecuted in state court.

Plaintiffs twice have had their day in court -- federal court. In the first instance, in Hollman, plaintiffs settled and released their claims in return for more than $100 million in federal and local services. In taking removal jurisdiction in this case, NAACP, the federal district court gave plaintiffs a second hearing and, ultimately, found plaintiffs' claims to be completely lacking in merit. The federal court of appeals agreed.

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[4]Rivet noted in a footnote that a federal court may protect its judgments by enjoining state-court proceedings under the relitigation exception to the Anti-Injunction Act. See Rivet, 118 S.Ct. at 926 n.3. Notwithstanding, Rivet did not rule out other procedural options, such as removal under the All Writs Act, to protect a federal court's on-going supervision of a consent decree. Pet. App. A-9.

Finally, petitioners' make-weight argument that the courts improperly delegated judicial authority because the courts "merely denied petitioners' motion to remand" and did not affirmatively issue a "writ" ordering removal, see Petitioners' Brief at 18-19, is without support; no court has so narrowly construed the All Writs Act. As this Court stated in New York Telephone Co., the Act empowers a federal court "to issue such commands . . . as may be necessary or appropriate . . . ." New York Telephone Co., 434 U.S. at 172. Obviously, an order denying a motion to remand and hence effectuating removal is such a command. See, e.g., In re Agent Orange, 996 F.2d at 1430-31.

CONCLUSION

Based on the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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